

UNITED STATES DISTRICT COURT
for
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

U.S.A. vs. Kevin Austin Kirby

Docket No. 5:11-CR-119-1F

Petition for Action on Probation

COMES NOW Arthur B. Campbell, probation officer of the court, presenting a petition for modification of the Judgment and Commitment Order of Kevin Austin Kirby, who, upon an earlier plea of guilty to Conspiracy to Distribute and Possess with Intent to Distribute a Quantity of Marijuana, in violation of 21 U.S.C. § 846, was sentenced by the Honorable James C. Fox, Senior U.S. District Judge, on November 14, 2011, to a 60 month term of probation under the standard conditions adopted by the court and the following additional conditions:

1. The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.
2. The defendant shall abstain from the use of any alcoholic beverages, shall not associate with individuals consuming alcoholic beverages, shall not frequent business establishments whose primary product to the consumer is alcoholic beverages, and shall not use any medication containing alcohol without the permission of the probation office or a prescription from a licensed physician.
3. The defendant shall abide by all conditions and terms of the home detention program for a period not to exceed 90 consecutive days. The defendant shall be restricted to his residence at all times except for pre-approved and scheduled absences for employment, education, religious activities, treatment, attorney visits, court appearances, court obligations or other activities as approved by the probation officer. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures specified by the probation officer. The defendant shall pay for electronic monitoring services as directed by the probation officer.
4. The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.
5. The defendant shall participate in such vocational training program as may be directed by the probation office.

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6. The defendant shall cooperate in the collection of DNA as directed by the probation officer.
7. The defendant shall serve a term of 6 months in the custody of the U.S. Marshal with credit for time served.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

Mr. Kirby was accepted into the HOPE (Drug/Reentry Court) Program. As a requirement of the program, the DROPS condition is used as a mechanism to sanction and deter any illegal drug use. The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

PRAYING THAT THE COURT WILL ORDER that probation be modified as follows:

1. While under supervision in the Eastern District of NC, the defendant shall participate in the DROPS Program and, in response to detected illegal drug use, shall be confined in the custody of the Bureau of Prisons for a period not to exceed 30 days of intermittent confinement, as arranged by the probation office, in the following increments: First Use - Two Days; Second Use - Five Days; Third Use - Ten Days.

Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/Jeffrey L. Keller
Jeffrey L. Keller
Supervising U.S. Probation Officer

/s/Arthur B. Campbell
Arthur B. Campbell
U.S. Probation Officer
310 New Bern Avenue, Room 610
Raleigh, NC 27601-1441
Phone: (919) 861-8677
Executed On: July 26, 2012

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ORDER OF COURT

Considered and ordered this 26th day of July, 2012, and ordered filed and made a part of the records in the above case.

James C. Fox
James C. Fox
Senior U.S. District Judge